In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1224

BILLY MAYES, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that they were convicted of a single conspiracy when multiple conspiracies were proved. They also contend that because of the dimensions of the conspiracy and the size and complexity of the charge to the jury, the jury's verdicts are inherently unreliable.

After a jury trial in the United States District Court for the Western District of Kentucky, petitioners were convicted of conspiring to transport, receive, conceal, store, barter, sell and dispose of stolen motor vehicles moving in interstate commerce, in violation of 18 U.S.C. 371,

2312 and 2313.[1] The court of appeals affirmed in a comprehensive opinion, upon which we rely (Pet. App. A-1 to A-33).

The facts are adequately set forth in the opinion of the court of appeals and may be summarized as follows. Petitioners and others (some of whom testified for the government at trial) were part of a conspiracy to steal or arrange for the theft of automobiles in a ten-state area. The conspirators would steal automobiles and switch the ownership papers of the stolen cars with those of wrecked automobiles, transferring the registration papers and other

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[1]Petitioners received the following sentences (Tr. 8565-8566, 8592-8635):

Petitioner	*Imprisonment*	*Fine*
Billy Mayes	5 years	$10,000
William Albert Hudson	5 years	$10,000
Shirley Basham	5 years	$10,000
Fred Tabor	1 year and 1 day	$ 1,000
Jimmy Thompson	2 years	$ 5,000
Hubert Harrison	5 years	$10,000
William Houk	5 years	$10,000
Nathan McDaniel	2 years	$ 5,000
Larry Gann	2 years	$ 5,000
Larry Suddeth	5 years	$10,000
James Dennison	5 years	$10,000
James Hendricks	5 years	$10,000
Carroll Ray Pemberton	5 years	$10,000
Lewis Bewley	2 years	$ 5,000
L.C. Cook	2 years	$ 5,000
Larry Osborn	1 year and 1 day	$ 1,000
Ernest Frank Fowler	5 years	$10,000
Chester Crawley	2 years	$ 5,000
James Donald Newberry	2 years	$ 5,000

Three defendants (Billy Miller, Charles Adams and Ronald Kinser) were acquitted by the jury. Charlotte Mayes was acquitted by the court at the close of the government's case. William Belvy Barbee pleaded guilty during the trial. Two defendants were fugitives at the time of trial.

vehicle identification from the wrecked to the stolen automobiles.[2] The stolen automobiles, now carrying impeccable credentials, would be driven to other states and sold to unsuspecting buyers (Pet. App. A-5).

The evidence at trial indicated that as many as 1,800 vehicles may have been stolen during the course of the conspiracy. At trial, evidence of 65 overt acts was introduced (Pet. App. A-6). Petitioners do not now challenge the sufficiency of the evidence against them.

The conspiracy was carried out under the overall direction of petitioners Mayes, Basham, and Hudson. Petitioners Wilson, Houk, Murray, Gann and others were the car thieves; petitioners Dennison and Fowler transported the stolen cars to other states; petitioners Harrison, Hudson and Dennison altered the identification numbers on the stolen vehicles; petitioners Hendricks and Osborne made out the fictitious title certificates for the stolen vehicles; petitioner L.C. Cook and Lewis Bewley received the cars prior to their disposal; and petitioners Hudson, Basham, Newberry, Barbee, Crawley, Hendricks, Pemberton, Fowler, Thompson, and Suddeth sold the stolen cars to innocent purchasers or used car dealers in other states.

1. The court of appeals, after carefully reviewing the approximately 9,000 pages of trial transcript, concluded that the evidence established a single continuing conspiracy (Pet. App. A-9). This determination involves only the

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[2]The conspirators took advantage of the decentralized Kentucky registration system, under which registration certificates are issued by 35 different county clerks' offices. Papers of wrecked automobiles, as well as forged papers purportedly issued in other states, were presented to county clerks to obtain new and seemingly valid papers matching the numbers and descriptions of the stolen vehicles. The conspirators moved from clerk's office to clerk's office and appeared at rush hours to decrease any chance of detection (Pet. App. A-5).

application of settled principles to the specific facts of this case, and accordingly presents no question warranting review by this Court. As the court of appeals correctly stated (Pet. App. A-7 to A-8):

> While the government did not prove that each defendant knew or was involved with all of the activities of all other defendants, this is not an essential element of proving a single conspiracy [citation omitted]. Indeed in any large organization, legal or illegal, it is common for willing participants not to be acquainted with all of the members of the organization, or even to know the nature of every aspect of the operation. Nor does the fact that the conspiracy continued over a long period of time and contemplated the commission of many illegal acts transform the single conspiracy into several conspiracies.

The conspiracy was marked by the long-term association of many individuals serving specified roles in the performance of designated tasks. And, although the same groupings of conspirators rarely recurred, one curious fact highlights the uniformity of operation: every stolen car underwent a vehicle safety inspection at the same automobile agency (Pet. App. A-5 to A-6). The court of appeals was justified in concluding that all petitioners worked as part of a unified "enterprise" with common methods and goals. See *Blumenthal* v. *United States*, 332 U.S. 539; *Braverman* v. *United States*, 317 U.S. 49.[3]

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[3]Petitioners have made no showing from the record to document their contention that multiple conspiracies existed.

Nor does this case conflict with decisions of other circuits, as petitioners contend (Pet. 19). In the cases cited, the question presented was whether failure to prove the existence of a unified conspiracy was prejudicial error. See *United States* v. *Goss*, 329 F.2d 180, 183-184 (C.A. 4); *United States* v. *Varelli*, 407 F.2d 735, 742-748 (C.A. 7); *Barnard* v. *United States*, 342 F.2d 309, 313 (C.A. 9); *Rocha* v. *United States*, 288 F.2d 545, 552-553 (C.A. 9). Here, one conspiracy was proven, and therefore no question of prejudicial error arose.

2. Petitioners also contend that because of the size and complexity of this case the jury was unable "to accurately determine the nature of the evidence * * *; to evaluate that evidence, and to reach some reasonably reliable conclusion as to guilt or innocence * * *" (Pet. 23).[4] But this contention is confounded at the outset: the jury understood the evidence and charge sufficiently well, and was sufficiently responsible and discriminating, that it acquitted three of the defendants.

Reduced to its essentials, the argument of petitioners is that the government is forbidden to prosecute large and complex conspiracies. All such conspiracies involve many overt acts requiring proof, there will be many witnesses, and the charge to the jury will be complex. But complexity itself does not deny petitioners due process of law. "When many conspire, they invite mass trial by their conduct" (*Kotteakos* v. *United States*, 328 U.S. 750, 773). Petitioners are entitled, of course, to a fair trial and adequate instructions to the jury. But size and complexity of the trial alone, absent some specific showing of unfairness or error in the charge, does not require reversal.

In this case the court of appeals responsibly combed the transcript and analyzed the particularized allegations of error. It concluded (Pet. App. A-33):

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[4]Petitioners cite what they state is a factual error by the court of appeals, claiming that if the court of appeals, which had the entire record in front of it, made such an error, the jury, with no record to refer to, must have made factual errors (Pet. 23). However, the actual facts show that there was no mistake by the court of appeals. The court stated (Pet. App. A-16) that Max Bayer, an unindicted co-conspirator, delivered a check to petitioner Tabor. This is consistent with Bayer's testimony that the check was delivered to Tabor through petitioner Basham (Tr. 3307).

> In a trial of this magnitude, it is of course inevitable that some errors both in judgment and in law may have occurred, errors which in another trial might be cured only to be replaced by others as yet unknown. Our careful review of the entire record of this case, however, convinces us that there was sufficient and substantial evidence to support the jury convictions of each of the appellants, that the jury was fairly and fully instructed in the law, and that no reversible error intervened to deprive any of the defendants of a fair trial.[5]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1975.

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[5]Contrary to petitioners' contention (Pet. 19), the trial court properly instructed the jury on the one-conspiracy issue. It told the jury: "But you must believe that this was one conspiracy, not a little group of conspiracies" (Tr. 8469). As with petitioners' contention on the existence of multiple conspiracies, they base their argument here on the facts of *Kotteakos* v. *United States, supra*, 328 U.S. at 767, and not on the facts of their own case (Pet. 12-14, 19).